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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

TODD JEFFREY ENSWORTH,

Defendant and Appellant.

G033027

(Super. Ct. No. 02NF1925)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

Amanda F. Benedict, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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We appointed counsel to represent appellant on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on appellant's behalf. We have examined the record and found no arguable issue. (*People v. Wende* (1979) 25 Cal.3d

436.) Appellant, on his own behalf, filed a supplemental brief contending his detention and the search of his motel room violated his Fourth Amendment rights. Although appellant's public defender filed a suppression motion on his behalf, appellant retained private counsel and the motion was taken off calendar. Appellant's new lawyer did not file a new suppression motion, and appellant eventually pleaded guilty to the charges. Consequently, we are unable to review appellant's Fourth Amendment claims since he abandoned the suppression motion below. (*People v. Cudjo* (1993) 6 Cal.4th 585, 627.)

Appellant complains his retained lawyer rendered ineffective assistance in failing to file a motion to suppress evidence. On this record, we cannot determine whether counsel's decision not to pursue the suppression motion was warranted. As our Supreme Court observed when confronting the identical issue, "[a] claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding." (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) Thus, appellant may present relevant circumstances not reflected in the record on appeal in a petition for habeas corpus. Accordingly, appellant's ineffective assistance claim is rejected.

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.